Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Court of Appeals overruled this objection (O'Brien and Bartlett, JJ., dissenting). The possibility of the prisoner waiving his rights was passed over, and the decision was rested on the ground that he had, as a matter of fact, been present during the whole proceeding, that the view was not a part of the trial, and "that the knowledge acquired by the jury in inspecting the premises was to enable them to better understand the evidence and not to obtain original testimony." The weight of authorities seems against this position: *People* v. *Palmer*, 43 Hun, 401; *People* v. *Bush*, 68 Cal. 623; and the weight of reason is also opposed. In this particular case the absence of the accused does not seem to have influenced the decision. But under different circumstances it might well prove of great importance to have the opportunity of observing the conduct and actions of the jury when taking the view. Suppose, for instance, between the murder and the trial the premises had accidentally become changed in appearance, the jury noting the discrepancy between the testimony and the facts might draw conclusions of vital moment against the defendant's witnesses. If it be argued that the jury are forbidden by the court to draw conclusions from what they see, the answer is that it is impossible to enforce obedience. Throughout the whole trial the jury must necessarily be comparing the testimony they hear with what they have seen. It is noteworthy, moreover, that when handwriting, bloodstains, or footprints are shown the jury, it is called the production of real evidence, and no one contends that examination by the jury of these matters is not a part of the trial. A "view" is hard to distinguish from this so-called real evidence. Giving the juryman a view of the premises is something more than giving him a mere instrument, like an eyeglass or an ear-trumpet. It is furnishing him with a basis for inference which will unavoidably be utilized. Hard though it seems to nullify a whole proceeding for such a small reason, yet it is better so, than to set a precedent of disregarding the rights of persons accused of crime.

WHEN IS A SHIP A TOTAL LOSS?— It remained for a late decision of the House of Lords to declare for the first time that a sunken ship is to be considered for the purposes of insurance as a total loss. *The Blairmore Co.* v. *Macredie*, 1898, App. Cas. 593. Doubtless no marine insurer was ever so bold as to contend otherwise. In that case the ship "Blairmore," insured for £15,000, sunk in a squall in San Francisco Harbor. The owners declared her a total loss, and formally abandoned her. Thereupon the underwriters raised her at an expense of £9,500, estimated that she could now be repaired for £1,500, and offered the ship and that sum to the owners. The owners refused, and brought suit for the full amount of the insurance. They contended that the ship was, and remained, a total loss. The underwriters practically conceded that the loss was once total, but claimed that when the ship was raised the loss became a partial one. The case was finally carried to the House of Lords. Their Lordships differed much in their reasons for their decisions, but the result was that the owners succeeded.

A ship is considered a constructive total loss under circumstances when a prudent uninsured owner would abandon her. *Adams* v. *Mackenzie*, 13 C. B. N. S. 442. Now in the principal case it is seen that a prudent owner would have abandoned the sunken but not the raised ship. The problem presented, then, was whether the rights of the

insured were finally fixed when he gave notice of abandonment, or whether those rights could be affected by a subsequent change in the condition of the ship. It was arguable from certain early cases of ships captured and recaptured that what was once a constructive total loss could thus become a partial loss. *Hamilton* v. *Mendes*, 2 Burr. 1199. No English case, however, had gone to the length of the contention of the underwriters that they could themselves expend money upon a ship which was once a constructive total loss, and that by improving her condition to such an extent that her owner if uninsured could no longer with reason think of abandoning her they could change her from a total loss to a partial loss, and thus escape full liability. The result would be that the distinction between a constructive total loss and a partial loss would no longer depend upon the question, when would a prudent uninsured owner abandon his ship? but, how much would an astute underwriter expend to turn a constructive total loss into a partial one? However, the subtle contention failed.

The problem in insurance is always the practical one, how did the parties understand their contract? It has indeed been the theory of the text-books that a ship is an actual total loss only when it ceases to exist *in specie* as a ship. But as a matter of fact the owner doubtless understood that it would be considered an actual total loss if his vessel sunk. The title to the wreck would then pass to the underwriters, and the risk of marketing it be upon them. As the Lord Chancellor declared, when his vessel reached the bottom of the sea the owner expected to be quit of it, though modern mechanical skill might bring it up again. At all events, the decision must effect the great object in mercantile law, — certainty.

RECENT CASES.

BILLS AND NOTES — CHECKS — NOTICE TO DRAWER. — The holder of a check brought an action thereon against the drawer, but the declaration did not allege that notice of its dishonor was given him. On the demurrer to a declaration, *held*, that judgment be given for the plaintiff. *Spink & Keyes Drug Co.* v. *Rayn Drug Co.*, 75 N. W. Rep. 18 (Minn.).

To charge the drawer of a bill, due notice to him must be alleged and proved by the holder. On the other hand, the drawer of a check must have suffered loss by reason of no notice being given him in order to escape liability on that ground. 2 Daniel, Neg. Inst. § 1587. Therefore the court properly holds that the burden of establishing loss is upon the drawer, and that he should allege and prove "no notice." *Harbeck* v. *Craft*, 4 Duer, 122. He is then assisted by a presumption that damage was suffered by him. *Ford* v. *McClung*, 5 W. Va. 156. Yet this presumption only shifts to the holder the burden of adducing evidence to rebut it, and the burden of proof remains throughout on the drawer. For other reasons it seems that "no notice" should be treated as an affirmative defence, not only in the case of checks, but also in that of all bills and notes. The cause of action is complete upon default at maturity, even though no notice be given. This is shown by the fact that the drawer or indorser may thereafter waive the laches of the holder.

BILLS AND NOTES — TRANSFER — NOTICE. — The defendant made a promissory note payable to A, who indorsed it to the plaintiff. The defendant was induced to make the note by the fraudulent representations of A. *Held*, that to recover on the note the plaintiff must take it without such notice of the fraud as would put a prudent man upon inquiry. *Limerick National Bank* v. *Adams*, 40 Atl. Rep. 166 (Vt.).

In accord is the early decision in England of *Gill* v. *Cubitt*, 3 B. & C. 466. That case has since been overruled by *Goodman* v. *Harvey*, 4 A. & E. 870, and is *contra* to the great weight of authority in this country. *Johnson* v. *Way*, 27 Oh. St. 374; *Hotch-*